

# **EXHIBIT B**

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**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**TRANSCRIPT OF PROCEEDINGS BEFORE THE HONORABLE  
MILTON I. SHADUR, Judge**

## APPEARANCES.

13 For the Class Plaintiffs:

MR. ADAM J. LEVITT  
MR. LAWERENCE D. KOLKER and  
MR. DANIEL W. KRASNER

*For the Defendants:*

**MR. ALAN N. SALPETER and  
MR. JOHN J. THARP**

**JESSE ANDREWS**  
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Chicago, Illinois 60604  
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\* \* \* \* \*

1                   THE CLERK: 01 C 2110, In re Comdisco.

2                   MR. LEVITT: Good morning, your Honor. Adam Levitt  
3 on plaintiffs' behalf. With me are my partners Larry Kolker  
4 and Dan Krasner.

5                   MR. KOLKER: Good morning, your Honor.

6                   MR. KRASNER: Good morning, your Honor.

7                   MR. SALPETER: Good morning, your Honor. Alan  
8 Salpeter and Jay Tharp for the defendants. I note the presence  
9 of the Plaintiffs' all star team this morning.

10                  (Laughter)

11                  THE COURT: Gee, I wish I could say the same on the  
12 defense side.

13                  (Laughter)

14                  MR. SALPETER: I want the record to reflect that you  
15 were laughing while you said that.

16                  THE COURT: Yes. As long as you were going to needle  
17 them, you too have the benefit of a needle.

18                  And I gather from the fact that you have appeared  
19 that we do not have objectors in place? So why don't you all  
20 sit down and let me deal with what I have to do under the  
21 circumstances here?

22                  It's astounding that this is only the second oldest  
23 case on my calendar. And it's not a matter of pride on the  
24 part of some other counsel that they have got one that's  
25 older -- we are finally as you know coming to the end of a very

1 long road that was made longer, and I fear a good deal more  
2 tortuous, by the unfortunate obstructions that had been placed  
3 in the path of this action by the original bankruptcy judge in  
4 the Comdisco bankruptcy case.

5 It has to be said, although as you know I was really  
6 pretty much a spectator and observing from the sidelines at  
7 best throughout this, that my sense is that the efforts that  
8 have been extended on behalf of the plaintiff class in the face  
9 of these obstacles were exemplary. And in my view they  
10 reflected the kind of professionalism that the critics of class  
11 actions who have to (and feel they have to, I guess, because  
12 they love to) point to what they view as poster children for  
13 crippling that kind of litigation, or at least inhibiting it,  
14 are never willing to recognize. But I expect to deal a little  
15 more with this subject later on.

16 As you know, my function at this end stage is to  
17 determine whether the class should be given final  
18 certification, and then relatedly whether the proposed plan of  
19 allocation should be approved in the traditional terms as fair,  
20 reasonable and adequate.

21 Now to that end what I have received has been a  
22 thorough, and I find a thoroughly persuasive, memorandum in  
23 support. Because it's so comprehensive, I think that I can  
24 afford to eschew a detailed description of the grounds for my  
25 ruling. Instead what I hope to do is primarily to incorporate

1 by reference what's been said in the memorandum.

2 Well, to begin with, despite the fact that it's a  
3 quarter century old at this point (like my tenure on the  
4 Court), and despite the fact that it's been overruled in part  
5 on other procedural respects, our Court of Appeals decision in  
6 that Armstrong case, Armstrong against the Board of School  
7 Directors -- I made a note, 616 F.2d 305 at page 314 --  
8 continues to be recognized as the definitive identification of  
9 what the relevant factors are in determining fairness,  
10 reasonableness and adequacy. So what I am going to do is to  
11 refer to those factors, although as I indicate I am going to do  
12 that pretty much in summary form, in light of what I have  
13 already described as how thorough counsel's memorandum has  
14 been.

15 And so the first consideration, and in many respects  
16 I guess the most important, is the comparison of the strengths  
17 and weaknesses of the plaintiffs' case and how those things  
18 tend to support the fairness of the arrived-at settlement. As  
19 all of us know, we always then encounter the phenomenon in  
20 which the plaintiff is telling us how terrible a case they had,  
21 and the defendants are telling us how terrible a case they had,  
22 because both sides really want the settlement to be approved.  
23 And despite the extent to which some of that description is  
24 hyperbolic, it is certainly true that this case changed  
25 dramatically as the result of Comdisco's falling out of the

1 case as a defendant. And as a result, with only the  
2 individuals as targets, the case had a dramatically different  
3 look and feel and reality than was the case at the outset.  
4 Because at that point something that would not have been true  
5 perhaps with Comdisco was that the amount of insurance coverage  
6 and the problems with insurance coverage started to play a  
7 major role. So I find that the reasons that are well spelled  
8 out in the memorandum at pages 7 through 11 amply support the  
9 fairness and adequacy and reasonableness of the settlement.

10 As far as ability to pay is concerned, which is the  
11 next factor, much the same thing is true for the reason that I  
12 have discussed. Suddenly the pot -- the potentially available  
13 pot -- changed very significantly. And that is going to bear  
14 importantly on the subject that I am going to be discussing  
15 later on, maybe as a final subject. And accordingly that  
16 factor, and the difficulties described here in dealing with the  
17 second layer of coverage, support the same conclusion.

18 As to whether continued litigation would be complex,  
19 prolonged and costly, I don't think that it can accurately be  
20 said that would be more complex prolonged and costly than  
21 what's happened up to now. But it certainly satisfies that  
22 requirement even if we look simply to future, if we apply -- if  
23 we were to apply -- the principle that is applicable to poker,  
24 in which what's in the pot no longer belongs to you, and you  
25 look only at the forwardgoing aspects of it.

1           The recommendation from plaintiffs' counsel plays a  
2 heavy role. And their view is one that I respect. They find  
3 that it's in the best interest of the settlement class, and I  
4 regard that as persuasive as well.

5           The absence of collusion I think pretty much speaks  
6 for itself. This has been very hard fought at every stage, one  
7 of the things that caused the expenditure of a lot of activity  
8 unfortunately didn't relate to the ultimate merits of the  
9 litigation -- there was too much activity that had to be  
10 carried on in order, you know, simply to stay in court  
11 effectively. And that too is applicable.

12          In terms of the class members overwhelmingly  
13 approving the settlement, that's certain true. As it happens,  
14 I am going to be one of the faculty people on a PLI 3-day  
15 session -- 2-da session -- on class actions in New York at the  
16 end of the month. And so I have been reading a lot of  
17 literature in that respect. Some of the articles, especially  
18 by Professor Geoff Miller, say, "Well, you know that really  
19 doesn't tell you much, because of the factors of inertia and  
20 the comparative stakes that are applicable." And that's true,  
21 I think, generally. But when you have a situation in which you  
22 just do not have anything other than a handful of parties who  
23 vote with their feet to get out of the litigation, I think that  
24 does speak strongly toward the concept that the Court has to  
25 apply in terms of evaluating a settlement.

1           And accordingly I find that each of the factors, that  
2 all of them point in the same direction. And that being true,  
3 I have no difficulty in making the finding, and I do find, that  
4 the proposed settlement and as well the Plan of Allocation,  
5 which I haven't spent much time on here. But I think that the  
6 differentiation between people who retained and people who did  
7 not retain shares was a sensible one, and that it's properly  
8 reflected in the formulation that comes on here.

9           Now that leads me to the final subject: the award of  
10 attorney's fees and expenses to class counsel. As you know I  
11 am one of what I guess is a shrinking minority in terms of  
12 viewing competitive bidding, and I resist the label of  
13 "auction," as a means to approach the subject. It's one of the  
14 things that I do plan -- because although I may be kicking a  
15 moribund horse, I hope it's not dead yet -- I plan to take that  
16 subject up at this PLI seminar as well.

17           It's not surprising that judges who do this don't win  
18 popularity contests among counsel. But the fact is, and I  
19 think it's been demonstrated -- despite some articles to the  
20 contrary by people whom I must confess I consider irresponsible  
21 in some respects -- it has been I think dramatically  
22 demonstrated that that norm so called that has developed in  
23 cases of class actions, in terms of the percentage of the  
24 settlement that ends up in counsel's pocket rather than the  
25 class' pocket, that the effect of competitive bidding is to

1 develop a sort of pattern, a sort of norm, that's substantially  
2 better for the class, for the clients.

3 By chance our Court of Appeals just 10 days ago --  
4 less than 10 days ago, a little over a week ago -- handed down  
5 a decision in a case call Taubenfeld against AON Corporation,  
6 04-3140 in which it -- it was decided July 5th. It's for  
7 anybody who cares to know, it's 2005 WL 1560331, in which the  
8 Court dealt with an objector on the sole subject of the award  
9 in the case before one of my colleagues and good friends, Harry  
10 Leinenweber.

11 And the Court basically said, "Well, the objector has  
12 maybe properly referred to the Seventh Circuit opinion in  
13 Synthroid that has urged that what the court ought to do is to  
14 try "to award the market price for legal services in light of  
15 the risk of nonpayment and the normal rate of compensation in  
16 the market at the time -- that is ex ante. But they said there  
17 was a failure of proof there, Because the only thing that the  
18 objector said was, "Well the District Judge didn't follow that  
19 without putting up suggested alternatives.

20 So the court proceeded to approve a 30 percent fee  
21 for counsel, saying that lead counsel had submitted a table of  
22 13 cases in the Northern District of Illinois where counsel was  
23 awarded fees amounting to 30 to 39 percent of the settlement  
24 fund.

25 Well, I have said elsewhere, and I will continue to

1 repeat, that the notion that somehow class actions ought to  
2 find their norm in the product of an agrarian society when we  
3 had PI cases that developed one-third as the norm, is sort of  
4 bizarre. And I think that the best evidence of that is the  
5 kind of responsible bid (and successful bid) that was made by  
6 class counsel here. Of course they didn't have a crystal ball,  
7 as I did not. And this is one case in which I know I made it  
8 plain at the very outset that if circumstances developed under  
9 which that did not appear to be fair and reasonable or adequate  
10 compensation for counsel, I was certainly prepared to take a  
11 fresh look.

12 Of course one reason for doing that in general terms  
13 is to avoid the possibility -- and I am not, I can emphasize, I  
14 am not talking about counsel in this case -- but to eliminate  
15 the possibility that counsel might try to low-ball a bid, and  
16 coincidentally with that would be tempted to sell out their  
17 clients early and cheaply. And of course we want to make sure  
18 in class actions that that's not done. One way to make sure  
19 about that is to say that we are not going to create an  
20 incentive for counsel to do that by saying, "You are stuck with  
21 what you bid for better or worse, and come what may." And of  
22 course, "come what may" in this situation, as I started out by  
23 saying, was dramatically different from what anybody I think  
24 could reasonably have anticipated at that point.

25 So that being the case, my determination is that the

1 request here -- which is actually less than the so-called  
2 lodestar -- that the requested 18 percent of the class number,  
3 just two and a half million -- under \$2.475 million -- is  
4 extremely fair. And so I approve that as well.

5 Well, unless anybody thinks I haven't covered any of  
6 the bases, I would simply want to end as I began. And that is  
7 I really cannot speak too highly of the services rendered by  
8 class counsel in an extraordinarily difficult situation. And  
9 as long as I have inflicted one needle on defense counsel, I  
10 suppose I ought to add, and this is true as well, that I am  
11 sure that the workout here has been the product of not only  
12 professional work on their side, but also reasonableness in  
13 terms of trying to cope with what was, I think, everyone had to  
14 recognize as a difficult situation.

15 So unless anybody has anything else to deal with, I  
16 am approving everything that's been submitted.

17 Mr. Levitt.

18 MR. LEVITT: Two things, your Honor. The expense  
19 reimbursement.

20 THE CLERK: Yes. The expense reimbursement is  
21 approved as well. I am sorry I didn't cover that.

22 MR. LEVITT: And the compensation to Mr. Moser.

23 THE COURT: Oh, yes. In a sense I recognize it's a  
24 token compensation. But I think in this instance, especially  
25 given the difficulties that I know he encountered en route in

1 terms of his ability to continue with the case, it seems to me  
2 that modest payment is appropriate, and I approve that as well.

3 MR. LEVITT: And if I may hand the final order and  
4 judgment with the Exhibit 1 attached to it, without tabs and  
5 the list of expenses.

6 THE COURT: Yes. I don't know who has been released  
7 from prison as a result of this settlement, but I guess  
8 everybody has.

9 MR. SALPETER: Thank you for all of your time,  
10 attention and care and skill as well. As you know, I am sure  
11 many judges simply rubber stamp these things and don't review  
12 them with the care and skill that you did. So we are greatly  
13 appreciative of that.

14 THE COURT: Well --

15 MR. SALPETER: Even though we didn't get paid as much  
16 money as the plaintiffs.

17 (Laughter)

18 THE COURT: Thank you very much.

19 (WHICH WERE ALL OF THE PROCEEDINGS HAD AT THE HEARING OF  
20 THE ABOVE-ENTITLED CAUSE ON THE DAY AND DATE AFORESAID.)

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C E R T I F I C A T E

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I HEREBY CERTIFY that the foregoing is a true and correct

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1 transcript from the report of proceedings in the above-entitled  
2 cause.

3 JESSE ANDREWS, CSR  
4 OFFICIAL COURT REPORTER  
5 UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION  
6 DATED: July 14, 2005

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